

Billy Terry

PLAINTIFF/PETITIONER/MOVANT'S NAME

K 89959

PRISON NUMBER

CALI Inst for Men

PLACE OF CONFINEMENT

P.O. Box 600
CITRUS, Calif 91708

ADDRESS

ELM - 127

FILED

2008 MAR 12 PM 3:57

CLERK U.S.D. AT THE COUNTY
SOUTHERN DISTRICT OF CALIFORNIABY Rm

DEPUTY

United States District Court
Southern District Of California

William Terry
 Plaintiff/Petitioner/Movant

Director of Correction Jeanne
 Woodford. Robert J. Hernandez warden
Dr. J. Ritter MD Dr Chen Dr J. Hunt,
Dr Giannini Defendant/Respondent

Civil No. 07cv2360 J (POR)

(TO BE FILLED IN BY U.S. DISTRICT COURT CLERK)

**MOTION AND DECLARATION UNDER
 PENALTY OF PERJURY IN SUPPORT
 OF MOTION TO PROCEED IN FORMA
 PAUPERIS**

I, William Terry,

declare that I am the Plaintiff/Petitioner/Movant in this case. In support of my request to proceed without prepayment of fees or security under 28 U.S.C. § 1915, I further declare I am unable to pay the fees of this proceeding or give security because of my poverty, and that I believe I am entitled to redress.

In further support of this application, I answer the following question under penalty of perjury:

1. Are you currently incarcerated? Yes No (If "No" go to question 2)

If "Yes," state the place of your incarceration

California Institution for Men

Are you employed at the institution?

Yes No

Do you receive any payment from the institution? Yes No

[Have the institution fill out the Certificate portion of this affidavit and attach a certified copy of the trust account statement from the institution of your incarceration showing at least the last six months transactions.]

2. Are you currently employed? Yes No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer. _____

b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer. Yard crew clean up
2006 RJ Donovan STATE Prison

3. In the past twelve months have you received any money from any of the following sources?:

- a. Business, profession or other self-employment Yes No
- b. Rent payments, royalties interest or dividends Yes No
- c. Pensions, annuities or life insurance Yes No
- d. Disability or workers compensation Yes No
- e. Social Security, disability or other welfare Yes No
- f. Gifts or inheritances Yes No
- g. Spousal or child support Yes No
- g. Any other sources Yes No

If the answer to any of the above is "Yes" describe each source and state the amount received and what you expect you will continue to receive each month. _____

4. Do you have any checking account(s)? Yes No

a. Name(s) and address(es) of bank(s): _____

b. Present balance in account(s): _____

5. Do you have any savings/IRA/money market/CDS' separate from checking accounts? Yes No

a. Name(s) and address(es) of bank(s): _____

b. Present balance in account(s): _____

6. Do you own an automobile or other motor vehicle? Yes No

a. Make: _____ Year: _____ Model: _____

b. Is it financed? Yes No

c. If so, what is the amount owed? _____

7. Do you own any real estate, stocks, bonds, securities, other financial instruments, or other valuable property?

Yes No

If "Yes" describe the property and state its value.

8. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support. None

9. List any other debts (current obligations, indicating amounts owed and to whom they are payable): None

10. List any other assets or items of value (specify real estate, gifts, trusts, inheritances, government bonds, stocks, savings certificates, notes, jewelry, artwork, or any other assets [include any items of value held in someone else's name]): None

12. If you answered all of the items in #3 "No," and have not indicated any other assets or sources of income anywhere on this form, you must explain the sources of funds for your day-to-day expenses.

STATE PRISON

I declare under penalty of perjury that the above information is true and correct and understand that a false statement herein may result in the dismissal of my claims.

2/19/08

DATE

William Teller

SIGNATURE OF APPLICANT

If you are a prisoner you must have an officer from your institution provide this official certificate as to the amount of money in your prison account. There are no exceptions to this requirement.

PRISON CERTIFICATE
(Incarcerated applicants only)
(To be completed by the institution of incarceration)

I certify that the applicant William Terry

(NAME OF INMATE)

K89959

(INMATE'S CDC NUMBER)

has the sum of \$ _____ on account to his/her credit at _____

(NAME OF INSTITUTION)

I further certify that the applicant has the following securities _____

to his/her credit according to the records of the aforementioned institution. I further certify that during

the past six months the applicant's *average monthly balance* was \$ 0 _____,

and the *average monthly deposits* to the applicant's account was \$ 0 _____.

ALL PRISONERS MUST ATTACH A CERTIFIED COPY OF THEIR TRUST ACCOUNT STATEMENT SHOWING TRANSACTIONS FOR THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF THE COMPLAINT PER 28 U.S.C. § 1915(a)(2).

2-29-08

DATE

J. Manalois

SIGNATURE OF AUTHORIZED OFFICER OF INSTITUTION

L. Manalois

OFFICER'S FULL NAME (PRINTED)

ACCOUNT CLERK II

OFFICER'S TITLE/RANK

TRUST ACCOUNT WITHDRAWAL AUTHORIZATION
(Incarcerated applicants only)

(This form MUST be completed by the prisoner requesting to proceed in forma pauperis. An incomplete "Trust Account Withdrawal Authorization Form," or "Prison Certificate" will result in automatic denial of the prisoner's request to proceed in forma pauperis.)

I, Billy Terry K 89959,
(Name of Prisoner/CDC No.) request and authorize the agency holding me in custody to prepare for the Clerk of the United States District Court for the Southern District of California, a certified copy of the statement for the past six months of my trust fund account (or institutional equivalent) activity at the institution where I am incarcerated.

I further request and authorize the agency holding me in custody to calculate and disburse funds from my trust fund account (or institutional equivalent) pursuant to any future orders issued by the Court relating to this civil action pursuant to the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Title VIII, §§ 801-10, 110 Stat. 1321 (1996).

This authorization is furnished in connection with a civil action filed in the Southern District of California, and I understand that, pursuant to 28 U.S.C. §§ 1914 and 1915(b)(1), the total amount of filing fees for which I am obligated is either \$350 (civil complaint) or \$5 (habeas corpus petition) (check one). I also understand that this fee will be debited from my account regardless of the outcome of this action. This authorization shall apply to any other agency into whose custody I may be transferred.

2/19/08

DATE

William Terry

SIGNATURE OF PRISONER

REPORT ID: TS3030 .701

REPORT DATE: 02/29/08

PAGE NO: 1

CALIFORNIA DEPARTMENT OF CORRECTIONS
 CALIF. INSTITUTION FOR MEN
 INMATE TRUST ACCOUNTING SYSTEM
 INMATE TRUST ACCOUNT STATEMENT

FOR THE PERIOD: DEC. 01, 2007 THRU FEB. 29, 2008

ACCOUNT NUMBER : K89999
 BED/CELL NUMBER: MIEH00000000127L
 ACCOUNT NAME : TERRY, WILLIAN
 ACCOUNT TYPE: I
 PRIVILEGE GROUP: A

TRUST ACCOUNT ACTIVITY

TRAN	DATE	CODE	DESCRIPTION	COMMENT	CHECK NUM	DEPOSITS	WITHDRAWALS	BALANCE
	12/01/2007		BEGINNING BALANCE					0.00
	12/04	D320	TRUST FUNDS T 3074/RJD			18.44		18.44
	12/06	W536	COPAY CHARGE 3175/COPAY			5.00		13.44
	12/10	FC02	DRAW-FAC 2 3196/MSF1			13.44		0.00

CURRENT HOLDS IN EFFECT

DATE PLACED	HOLD CODE	DESCRIPTION	COMMENT	HOLD AMOUNT
02/21/2008	H114	COPAY FEE, MED.	4354/MAR24	5.00

TRUST ACCOUNT SUMMARY

BEGINNING BALANCE	TOTAL DEPOSITS	TOTAL WITHDRAWALS	CURRENT BALANCE	HOLDS BALANCE	TRANSACTIONS TO BE POSTED
0.00	18.44	18.44	0.00	5.00	0.00

CURRENT
 AVAILABLE
 BALANCE

5.00-



COPY OF THE TRUST ACCOUNT MAINTAINED
 BY THIS OFFICE.
 ATTEST: 2-29-08
 CALIFORNIA DEPARTMENT OF CORRECTIONS
 BY Wm. J. Manalo
 TRUST OFFICE

CALIFORNIA INSTITUTION FOR MEN

PROOF OF SERVICE BY MAIL

(C.C.P. §1013a; §2015.5; Fed.R.Civ.P. 5; 28 U.S.C. 1746)

I am over the age of eighteen years, a citizen of the United States, a resident of the State of California, (A) and / and not a party to the within action. My mailing address is: P.O. BOX 600, CHINO, CA 91708-0600.

On the following date: (B) 3-7-08, I served the following document(s): (C)

UNITED STATES DISTRICT SOUTHERN
OF CALIF CALIFORNIA 880 FRONT ST. STE 4290
SAN DIEGO, CA 92101-8900

On the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, addressed as follows to the following parties: (D)

MOTION TO PROCEED US DISTRICT COURT
IN FORMA PAUPERIS 880 FRONT ST. STE 4290
SAN DIEGO CA 92101-
8900

I am readily familiar with the normal business practices for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, in a sealed envelope with postage fully prepaid, it is deposited in a box so provided at the correctional institution in which I am presently confined.

I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(E) Name: William Terry CDCR#: K89959
Signed: William Terry Dated: 3-7-08

CIM MAILROOM ACKNOWLEDGEMENT OF MAILING

DATED: 3/11/08 STAFF: JPA

SIGNED: _____

1

2

2

4

4

6

5

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WILLIAM TERRY,
CDCR #K-89959,

Plaintiff.

vs.

JEANNE WOODFORD, et al..

Defendants

Civil No. 07-2360 J (POR)

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING CASE
WITHOUT PREJUDICE
PURSUANT TO
28 U.S.C. § 1915(a)**

[Doc. No. 2]

18 William Terry (“Plaintiff”), a state prisoner currently incarcerated at the California
19 Institution for Men located in Chino, California, and proceeding pro se, has submitted a civil
20 rights Complaint pursuant to 28 U.S.C. § 1983.

21 Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead,
22 he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a)
23 [Doc. No. 2].

I. MOTION TO PROCEED IFP

Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C.

1 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,
2 169 F.3d 1176, 1177 (9th Cir. 1999). Prisoners granted leave to proceed IFP however, remain
3 obligated to pay the entire fee in installments, regardless of whether the action is ultimately
4 dismissed for any reason. *See* 28 U.S.C. § 1915(b)(1) & (2).

5 Prisoners seeking leave to proceed IFP must also submit a “certified copy of the trust fund
6 account statement (or institutional equivalent) for the prisoner for the 6-month period
7 immediately preceding the filing of the complaint....” 28 U.S.C. § 1915(a)(2). From the
8 certified trust account statement, the Court must assess an initial payment of 20% of (a) the
9 average monthly deposits in the account for the past six months, or (b) the average monthly
10 balance in the account for the past six months, whichever is greater, unless the prisoner has no
11 assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see also Taylor v. Delatoore*, 281 F.3d 844, 850 (9th
12 Cir. 2002). Thereafter, the institution having custody of the prisoner must collect subsequent
13 payments, assessed at 20% of the preceding month’s income, in any month in which the
14 prisoner’s account exceeds \$10, and forward those payments to the Court until the entire filing
15 fee is paid. *See* 28 U.S.C. § 1915(b)(2).

16 While Plaintiff has filed a Motion to Proceed IFP in this matter pursuant to 28 U.S.C.
17 § 1915(a), he has not attached a certified copy of his prison trust account statement for the 6-
18 month period immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2);
19 S.D. CAL. CIVLR 3.2. Section 1915(a)(2) clearly mandates that prisoners “seeking to bring a
20 civil action ...without prepayment of fees ... *shall* submit a certified copy of the trust fund
21 account statement (or institutional equivalent) ... for the 6-month period immediately preceding
22 the filing of the complaint.” 28 U.S.C. § 1915(a)(2) (emphasis added).

23 Without Plaintiff’s trust account statement, the Court is simply unable to assess the
24 appropriate amount of the filing fee required to initiate this action. *See* 28 U.S.C. § 1915(b)(1).
25 Therefore, Plaintiff’s Motion to Proceed IFP must be DENIED.

26 ////

27 ////

28 ////

1 **II. CONCLUSION AND ORDER**

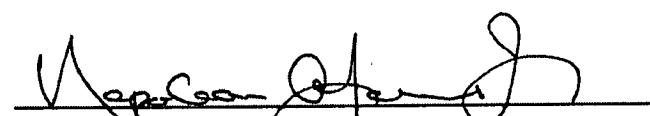
2 For the reasons set forth above, **IT IS ORDERED** that:

3 (1) Plaintiff's Motion to Proceed IFP [Doc. No. 2] is **DENIED**.
4 (2) This action is **DISMISSED** without prejudice for failure to prepay the \$350 filing
5 fee mandated by 28 U.S.C. § 1914(a), and for failure to successfully move to proceed IFP
6 pursuant to 28 U.S.C. § 1915(a).

7 (3) Plaintiff is **GRANTED** forty five (45) days from the date this Order is Filed to
8 either: (1) pay the entire \$350 filing fee, **or** (2) file a new Motion to Proceed IFP, *which*
9 *includes a certified copy of his trust account statement for the 6-month period preceding the*
10 *filings of his Complaint* pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CivLR 3.2(b).

11 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with a
12 Court-approved form "Motion and Declaration in Support of Motion to Proceed IFP" in this
13 matter. If Plaintiff neither pays the \$350 filing fee in full nor sufficiently completes and files the
14 attached Motion to Proceed IFP, together with a certified copy of his prison trust account
15 statement within 45 days, this action shall remained closed without further Order of the Court.

16
17
18 DATED: February 4, 2008


19 HON. NAPOLEON A. JONES, JR.
20 United States District Judge